

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

FOUNDATION AGAINST )  
INTOLERANCE AND RACISM, INC. ) Civil Action No. 2:24-cv-1770

STEVE WALKER, in his official capacity as Executive Director of the Washington State Housing Finance Commission,

## INTRODUCTION

1. Owning a home is fundamental to the American Dream—yet high housing prices make this dream unattainable for many Washingtonians. To address this problem, in 2024, the Washington State Housing Finance Commission (Commission) created a program to increase access to affordable housing. The Covenant Homeownership Program (Program) provides zero-interest secondary mortgage loans to first-time homebuyers. But this opportunity to own a home isn't available to all. The Commission restricts eligibility to the Program on the basis of race.

1. 2. Plaintiff Foundation Against Intolerance and Racism (FAIR) is a  
 2. nationwide grassroots organization with chapters in Washington. FAIR fights for  
 3. equality for all individuals regardless of whether they are members of  
 4. underrepresented groups. It has members who are ready, willing, and able to  
 5. purchase a home in the State of Washington. But those members are ineligible for a  
 6. loan under the Program. Because the Program bases eligibility on race, some of  
 7. FAIR's members are ineligible for the program based purely on their race.

8. 3. FAIR brings this action to vindicate its members' rights to equal  
 9. protection and end the Commission's state-sponsored racial discrimination. The  
 10. Fourteenth Amendment's Equal Protection Clause requires the government to treat  
 11. its citizens as individuals—not as members of a racial group. By providing benefits  
 12. expressly on the basis of race, the Program's eligibility criteria violate the  
 13. Constitution.

#### 14. **JURISDICTION AND VENUE**

15. 4. This action arises under the Fourteenth Amendment to the United  
 16. States Constitution and 42 U.S.C. § 1983. The Court has jurisdiction over this federal  
 17. claim under 28 U.S.C. §§ 1331 (federal question) and 1343(a) (redress for deprivation  
 18. of civil rights). Declaratory relief is authorized by the Declaratory Judgment Act, 28  
 19. U.S.C. §§ 2201–2202.

20. 5. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1)–(2). The  
 21. Defendant resides within this district and a substantial part of the events giving rise  
 22. to this claim have occurred or will occur in the Western District of Washington.

#### 23. **PARTIES**

24. 6. Plaintiff Foundation Against Intolerance and Racism, Inc., is a  
 25. nonprofit organization established to defend the principle of equal protection and  
 26. equal rights for all. FAIR engages in litigation to ensure that diversity and inclusion  
 27. efforts are non-discriminatory. FAIR also works at the grassroots level to promote a  
 28. common culture based on universal equality and fairness. At least one of FAIR's

members is ready, willing, and able to apply and be considered for the Program, and would be eligible for the Program's benefits if they were of a different racial group.

7. Specifically, FAIR Member "A" resides in Washington and wishes to buy a home in the state. She identifies as European-American. But for her race, Member A meets the first-time homebuyer criteria required by the Program: she is a first-time homebuyer; her household income is at or below the median income of the county where she resides and is interested in buying a home; and she and her parents lived in Washington before April 1968. Member A is ready, willing, and able to apply and be considered for a loan provided under the Program.

8. Defendant Steve Walker is the Executive Director of the Washington State Housing Finance Commission, which implements the Covenant Homeownership Program. The Commission is a public body corporate and politic established pursuant to Wash. Rev. Code Ann. § 43.180 and is an instrumentality of the state exercising essential government functions. As Executive Director, Mr. Walker oversees the Commission and its programs, including the Covenant Homeownership Program. Mr. Walker has a duty to comply with the United States Constitution by not discriminating on the basis of race. Mr. Walker is sued in his official capacity.

## FACTUAL ALLEGATIONS

## The Washington State Housing Finance Commission and The Covenant Homeownership Act

9. The Washington State Housing Finance Commission was established in 1983 by the Washington Legislature. The goal of the Commission is to increase access to affordable housing for the people of Washington. It is committed to investing in housing and community assets that prioritize racial equity and consider long-term sustainability.

10. On May 8, 2023, Washington Governor Jay Inslee signed HB 1474, the Covenant Homeownership Act. It directed the Commission to design, develop,

1 implement, and evaluate one or more special purpose credit programs to reduce racial  
 2 disparities in homeownership in the state by providing down payment and closing  
 3 cost assistance.

4 **The Covenant Homeownership Program**

5 11. On July 1, 2024, the Washington State Housing Finance Commission  
 6 launched the Covenant Homeownership Program. The program offers downpayment  
 7 and closing cost assistance for first-time homebuyers in the form of a zero-interest  
 8 secondary mortgage loan.

9 12. To be eligible for the Program, applicants must meet certain  
 10 requirements.

11 13. The applicant must have a household income at or below 100% of the  
 12 median income of the county in which he or she is buying the home.

13 14. The applicant must be a “first-time homebuyer.” The statute defines  
 14 first-time homebuyer to include an applicant: (1) who has not owned a home within  
 15 the past three years; (2) who is a single parent and has only owned a home while  
 16 married to a former spouse; (3) who is a displaced homemaker and has only owned a  
 17 home with a spouse; (4) who previously only owned a manufactured home; or (5) who  
 18 previously owned property determined to be uninhabitable. (See Exhibit A, Covenant  
 19 Homeownership Program FAQ.)

20 15. The applicant or their parent, grandparent, or great-grandparent  
 21 must have lived in Washington state before April 1968.

22 16. However, eligibility for the Program’s benefits is restricted to  
 23 individuals of a preferred race or individuals whose parent, grandparent, or great-  
 24 grandparent is a member of a preferred race.

25 17. In particular, only an applicant or an applicant whose parent,  
 26 grandparent, or great-grandparent is black, Hispanic, Native American/Alaska  
 27 Native, Native Hawaiian or other Pacific Islander, Korean or Asian Indian is eligible  
 28 to apply for the Program (See Exhibit A).

18. Individuals and their ancestors who are not from a preferred race,  
 2 including (among many others) Japanese-Americans, Jewish-Americans, Arab-  
 3 Americans, and Caucasian-Americans, are categorically ineligible for the Program.

19. The Program homebuyers “must provide documentation of the  
 2 residency and race/ethnicity of the person (whether the homebuyer themselves or  
 3 their parent/grandparent/great-grandparent) who lived in Washington state before  
 4 April 1968.” No proof is required from any individual applicant that he or she or their  
 5 parent, grandparent, or great grandparent personally experienced racial  
 6 discrimination when attempting to buy a home.

## 10 CAUSE OF ACTION

### 11 **(Violation of the Equal Protection Clause of the Fourteenth 12 Amendment, through 42 U.S.C. § 1983)**

20. Plaintiff hereby realleges each and every allegation contained in  
 14 Paragraphs 1 through 19 as though fully set forth herein.

21. The Fourteenth Amendment to the United States Constitution  
 16 provides: “No State shall make or enforce any law which shall . . . deny to any person  
 17 within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

22. 42 U.S.C. § 1983 provides that: “Every person who, under color of any  
 19 statute, ordinance, regulation, custom, or usage, of any State or Territory or the  
 20 District of Columbia, subjects, or causes to be subjected, any citizen of the United  
 21 States or other person within the jurisdiction thereof to the deprivation of any rights,  
 22 privileges, or immunities secured by the Constitution and laws, shall be liable to the  
 23 party injured in an action at law, suit in equity, or other proper proceeding for redress  
 24 . . .”

25. Defendant Steve Walker, Executive Director of the Washington  
 26 Housing Finance Commission, is a “person” within the meaning of 42 U.S.C. § 1983.

27. The Defendant has acted and is acting “under color of state law”  
 28 within the meaning of § 1983.

25. The Program discriminates on the basis of race in violation of the Equal Protection Clause.

26. The Program facially discriminates on the basis of race.

27. The Program is subject to strict scrutiny because it categorizes individuals on the basis of race.

28. The Program's racial classifications do not serve a compelling government interest.

29. The Defendant has not specifically identified any racial discrimination to be remedied by the Program.

30. The Defendant cannot identify any statute or constitutional provision that would be violated in the absence of its race-based Program.

31. The Defendant lacks a strong basis in evidence to conclude that remedial action is necessary regarding any racial discrimination in the State of Washington.

32. Even if the Defendant can demonstrate that the Program's racial classifications serve a compelling government interest, the Defendant cannot prove that the racial exclusivity mandated by the Program is narrowly tailored towards achieving that interest.

33. The Defendant has not attempted to implement any race-neutral alternatives and the Program does not provide any end date for its race-based measures.

34. The Program's racial classifications use race as a negative.

35. The Program's racial classifications use race as a stereotype.

36. Plaintiff's members have been and will continue to be harmed by Defendant's racial discrimination.

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

1. An entry of judgment declaring that the racial eligibility preferences and  
2 provision of housing benefits in Defendant's Covenant Homeownership  
3 Program violate the Equal Protection Clause.
4. An entry of a permanent injunction against Defendant prohibiting the  
5 Defendant and Defendant's officers, agents, affiliates, servants, successors,  
6 employees, and all other persons in active concert or participation with  
7 Defendant from continuing to enforce the challenged discriminatory aspects  
8 of the Covenant Homeownership Program.
9. Entry of an order requiring Defendant to implement eligibility criteria and  
10 provide housing benefits without regard to the race of applicants.
11. An award of attorney's fees and costs in this action pursuant to 42 U.S.C.  
12 § 1988.
13. An award of nominal damages in the amount of \$1.00.
14. An award of any further legal or equitable relief this Court may deem just  
15 and proper.

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DATED: October 29, 2024.

Respectfully submitted:

PACIFIC LEGAL FOUNDATION

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